

**U.S. District Court
Eastern District of Kentucky (Lexington)
CIVIL DOCKET FOR CASE #: 5:14-cv-00105-ART**

Eagle Mining, LLC v. Elkland Holdings, LLC
Assigned to: Judge Amul R. Thapar
Cause: 09:1 U.S. Arbitration Act

Date Filed: 03/19/2014
Date Terminated: 07/14/2014
Jury Demand: None
Nature of Suit: 896 Other Statutes: Arbitration
Jurisdiction: Federal Question

Plaintiff

Eagle Mining, LLC

represented by **Drayer B. Spurlock**
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V.

Defendant

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*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
03/19/2014	<u>I 1</u>	COMPLAINT (Filing fee \$400; receipt number 0643-2900725), filed by Eagle Mining, LLC. (Attachments: # <u>1</u> Exhibit 1 Contract Mining Agreement, # <u>2</u> Exhibit 2 Demand for Arbitration, # <u>3</u> Exhibit 3 Award of Arbitrator, # <u>4</u> Civil Cover Sheet, # <u>5</u> Summons Tendered, # <u>6</u> Case Assignment)(STC) (Entered: 03/20/2014)
03/19/2014	<u>I 2</u>	FRCP 7.1 DISCLOSURE STATEMENT by Eagle Mining, LLC. (STC) (Entered: 03/20/2014)
03/19/2014	<u>I 3</u>	MOTION for J. Scott Sexton to Appear Pro Hac Vice by Eagle Mining, LLC (Filing fee \$95; receipt number 0643-2900812) (Attachments: # <u>1</u> Affidavit, # <u>2</u> Proposed Order)(STC) (Entered: 03/20/2014)
03/19/2014	<u>I 4</u>	Summons Issued as to Elkland Holdings, LLC; Summons issued and returned to counsel by U.S. Mail for service by Kentucky Secretary of State. (STC) (Entered: 03/20/2014)
03/20/2014	<u>I</u>	BAR STATUS Check completed as to J. Scott Sexton re <u>3</u> MOTION for J. Scott Sexton to Appear Pro Hac Vice by Eagle Mining, LLC. (STC) (Entered: 03/20/2014)
03/20/2014	<u>I</u>	Conflict Check run. (STC) (Entered: 03/20/2014)
03/20/2014	<u>I</u>	***MOTION SUBMITTED TO CHAMBERS of Judge Forester for review: re <u>3</u> MOTION for J. Scott Sexton to Appear Pro Hac Vice by Eagle Mining, LLC (STC) (Entered: 03/20/2014)
03/24/2014	<u>I 5</u>	ORDER: (1) GRANTING atty J. Scott Sexton <u>3</u> Motion to Appear Pro Hac Vice for plaintiff; (2) atty shall within 10 days complete the registration for electronic filing within 30 days; (3) atty shall be subject to the jurisdiction & rules of the KY Supreme Court governing professional conduct. Signed by Judge Karen K. Caldwell on 3/24/14. (KJR)cc: COR (Entered: 03/24/2014)
03/24/2014	<u>I 6</u>	SUMMONS Returned Executed by Eagle Mining, LLC via By and through Kentucky Secretary of State as agent for service of process pursuant to KRS 454.210 to Elkland Holdings, LLC served on 3/24/2014, answer due 4/14/2014. (Spurlock, Drayer) (Entered: 03/24/2014)
03/28/2014	<u>I 7</u>	CERTIFIED MAIL RECEIPT to Secretary of State re <u>4</u> Summons Issued. (STC) (Entered: 03/28/2014)
04/08/2014	<u>I 8</u>	ORDER REASSIGNING CASE: Case reassigned to Judge Amul R. Thapar for all further proceedings. Judge Karl S. Forester no longer assigned to case. Signed by Judge Karen K.

		Caldwell on 4/8/2014. (Attachments: # <u>1</u> Case Assignment)(SCD)cc: COR (Entered: 04/09/2014)
04/09/2014	<u>I</u>	Conflict Check run. (SCD) (Entered: 04/09/2014)
04/09/2014	<u>I</u>	***FILE SUBMITTED TO CHAMBERS of Judge Thapar for review: <u>8</u> Order Reassigning Case (SCD) (Entered: 04/09/2014)
04/10/2014	<u>11</u>	SUMMONS RETURNED by Eagle Mining, LLC: SERVICE BY SECRETARY OF STATE to Elkland Holdings, LLC COMPLETED on 4/10/2014. Secretary of State return states delivered on 03/28/2014. (STC) (Entered: 04/15/2014)
04/14/2014	<u>I</u> <u>2</u>	NOTICE of Appearance by David Andrew Owen on behalf of Elkland Holdings, LLC (Owen, David) (Entered: 04/14/2014)
04/14/2014	<u>10</u>	Proposed Agreed Order/Stipulation <i>extending Defendant's deadline to respond, move or otherwise plead in response to <u>1</u> Complaint</i> by Elkland Holdings, LLC. (Owen, David) (Entered: 04/14/2014)
04/15/2014	<u>I</u>	***FILE SUBMITTED TO CHAMBERS of Judge Thapar for review: re <u>10</u> Proposed Agreed Order/Stipulation <i>extending Defendant's deadline to respond, move or otherwise plead in response to <u>1</u> Complaint</i> by Elkland Holdings, LLC (STC) (Entered: 04/15/2014)
04/15/2014	<u>12</u>	ORDER: Parties' <u>10</u> Proposed Agreed Order/Stipulation <i>extending Defendant's deadline to respond, move or otherwise plead in response to <u>1</u> Complaint</i> is DENIED. Signed by Judge Amul R. Thapar on 4/15/2014.(STC)cc: COR (Entered: 04/15/2014)
04/15/2014	<u>13</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Elkland Holdings, LLC (Attachments: # <u>1</u> Proposed Order)(Owen, David) (Entered: 04/15/2014)
04/16/2014	<u>I</u>	***MOTION SUBMITTED TO CHAMBERS of Judge Thapar for review: re <u>13</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Elkland Holdings, LLC (STC) (Entered: 04/16/2014)
04/16/2014	<u>14</u>	ORDER: <u>13</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Elkland Holdings, LLC is GRANTED. Dft shall answer or otherwise respond to complaint by 4/18/2014. Signed by Judge Amul R. Thapar on 4/16/2014.(STC)cc: COR (Entered: 04/16/2014)
04/18/2014	<u>15</u>	MOTION to Dismiss for Lack of Jurisdiction by Elkland Holdings, LLC , MOTION to Dismiss by Elkland Holdings, LLC <i>for Improper Venue</i> , MOTION to Dismiss for failure to state a claim by Elkland Holdings, LLC <i>or, in the alternative</i> , MOTION for Order by Elkland Holdings, LLC <i>to Transfer</i> (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit A – Elklands West Virginia filing, # <u>3</u> Exhibit B – Arbitration Hearing Testimony of S. Davis, # <u>4</u> Exhibit C – Muzzarelli Declaration, # <u>5</u> Exhibit D – Davis Declaration, # <u>6</u> Proposed Order Dismissing Complaint, # <u>7</u> Proposed Order Transferring Action)(Owen, David) (Entered: 04/18/2014)
04/24/2014	<u>16</u>	NOTICE by Elkland Holdings, LLC <i>of Assignment of Cause Number to Pending West Virginia Case</i> (Attachments: # <u>1</u> Exhibit A, Part 1: Petition, # <u>2</u> Exhibit A, Part 2: CMA+Amendments, # <u>3</u> Exhibit A, Part 3: Eagle's Arbitration Demands, # <u>4</u> Exhibit A, Part 4: Elkland's Answering Statement and Counterclaim, # <u>5</u> Exhibit A, Part 5: Elkland's Amended Counterclaim, # <u>6</u> Exhibit A, Part 6: Award of the Arbitrator, # <u>7</u> Exhibit A, Part 7: S. Davis Arbitration Hearing Testimony, # <u>8</u> Exhibit A, Part 8: Scheduling Order, # <u>9</u> Exhibit A, Part 9: Elkland's Prehearing Brief (excerpts), # <u>10</u> Exhibit A, Part 10: Civil Cover Sheet)(Owen, David) (Entered: 04/24/2014)
04/25/2014	<u>I</u>	***FILE SUBMITTED TO CHAMBERS of Judge Thapar for review: <u>16</u> Notice., (STC) (Entered: 04/25/2014)
05/02/2014	<u>17</u>	

		<p>RESPONSE in Opposition re <u>15</u> MOTION to Dismiss for Lack of Jurisdiction by Elkland Holdings, LLC MOTION to Dismiss by Elkland Holdings, LLC <i>for Improper Venue</i> MOTION to Dismiss for failure to state a claim by Elkland Holdings, LLC <i>or, in the alternative</i> MOTION for Order by Elkland Holdings, LLC <i>to Transfer</i> filed by Eagle Mining, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit Day 1 Transcript Excerpts, # <u>13</u> Exhibit Day 2 Transcript Excerpts, # <u>14</u> Exhibit Day 3 Transcript Excerpts, # <u>15</u> Exhibit Day 4 Transcript Excerpts, # <u>16</u> Exhibit Day 5 Transcript Excerpts, # <u>17</u> Exhibit Day 8 Transcript Excerpts, # <u>18</u> Exhibit Arbitration Ex. 1, # <u>19</u> Exhibit Arbitration Ex. 3, # <u>20</u> Exhibit Arbitration Ex. 7, # <u>21</u> Exhibit Arbitration Ex. 18, # <u>22</u> Exhibit Arbitration Ex. 20, # <u>23</u> Exhibit Arbitration Ex. 21, # <u>24</u> Exhibit Arbitration Ex. 22, # <u>25</u> Exhibit Arbitration Ex. 23, # <u>26</u> Exhibit Arbitration Ex. 24, # <u>27</u> Exhibit Arbitration Ex. 25, # <u>28</u> Exhibit Arbitration Ex. 27, # <u>29</u> Exhibit Arbitration Ex. 29, # <u>30</u> Exhibit Arbitration Ex. 33, # <u>31</u> Exhibit Arbitration Ex. 62, # <u>32</u> Exhibit Arbitration Ex. 304, # <u>33</u> Exhibit Arbitration Ex. 324, # <u>34</u> Exhibit Arbitration Ex. 333, # <u>35</u> Exhibit Arbitration Ex. 334, # <u>36</u> Exhibit Arbitration Ex. 335, # <u>37</u> Exhibit Arbitration Ex. 436, # <u>38</u> Exhibit Arbitration Ex. 450, # <u>39</u> Exhibit Arbitration Ex. 819, # <u>40</u> Proposed Order)(Sexton, J.) (Additional attachment(s) added on 5/5/2014: # <u>41</u> CORRECT Arbitration Ex 7 Certificate of Manager – Part 1, # <u>42</u> CORRECT Arbitration Ex 7 Certificate of Manager – Part 2) (STC). (Additional attachment(s) added on 5/5/2014: # <u>43</u> CORRECT Arbitration Ex. 819 Expert Report of R. Barbaro Part 1, # <u>44</u> CORRECT Arbitration Ex. 819 Expert Report of R. Barbaro Part 2) (STC). (Entered: 05/02/2014)</p>
05/05/2014	<u>I</u>	<p>NOTICE RE: DOCUMENT CONVERSION REQUIREMENT and NOTICE OF DOCKET MODIFICATION TO J. Scott Sexton re <u>17</u> Response in Opposition to Motion; <u>Error 1</u>: the pleading was scanned instead of converted into PDF format directly from the native word application. Use a scanner ONLY if you cannot electronically prepare your documents with a word processing software package and convert them to PDF format. <u>Error 2</u>: attachments were insufficiently described as "Exhibit A," "Exhibit B," "Arbitration Ex 1." Entry by attorney; Correction: the Clerk renamed the attachments. Attachments must be adequately described. Example: Exhibit A (incorrect); Exhibit A Affidavit of John Doe (correct). <u>Error 3</u>: Arbitration Exhibit 7 and Arbitration Exhibit 819 exceed the five megabyte (5 MB) size limit; Entry by attorney; Correction: Clerk separated the PDF images into 2 segments. Counsel is reminded that large documents may not upload properly into ECF or download within a reasonable amount of time; therefore, when any particular document exceeds 5 MB, the document must be segmented into separate documents of 5 MB or less. The proper scanner settings are set forth on Page 5 of the ECF User Manual. No further action required by counsel. cc: COR (STC) (Entered: 05/05/2014)</p>
05/14/2014	<u>18</u>	<p>MOTION for Leave to File Excess Pages by Elkland Holdings, LLC (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Proposed Order)(Owen, David) (Entered: 05/14/2014)</p>
05/15/2014	<u>19</u>	<p>VIRTUAL ORDER: granting <u>18</u> Motion for Leave to File Excess Pages. Elkland seeks five extra pages in its reply brief. For the reasons provided in its motion, that motion is GRANTED. Signed by Judge Amul R. Thapar on 5/15/2014. (STC)cc: COR (Entered: 05/15/2014)</p>
05/19/2014	<u>20</u>	<p>REPLY to Response to Motion re <u>15</u> MOTION to Dismiss for Lack of Jurisdiction by Elkland Holdings, LLC MOTION to Dismiss by Elkland Holdings, LLC <i>for Improper Venue</i> MOTION to Dismiss for failure to state a claim by Elkland Holdings, LLC <i>or, in the alternative</i> MOTION for Order by Elkland Holdings, LLC <i>to Transfer</i> filed by Elkland Holdings, LLC. (Owen, David) (Entered: 05/19/2014)</p>
05/20/2014	<u>I</u>	<p>***MOTION SUBMITTED TO CHAMBERS of Judge Thapar for review: re <u>15</u> MOTION to Dismiss for Lack of Jurisdiction by Elkland Holdings, LLC MOTION to Dismiss by Elkland Holdings, LLC <i>for Improper Venue</i> MOTION to Dismiss for failure to state a claim by Elkland Holdings, LLC <i>or, in the alternative</i> MOTION for Order by Elkland Holdings, LLC <i>to Transfer</i></p>

		(STC) (Entered: 05/20/2014)
06/16/2014	<u>21</u>	MOTION to Vacate by Elkland Holdings, LLC (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1 – CMA and amendments, # <u>3</u> Exhibit 2 – Arbitration Demand and Supplemental Demand, # <u>4</u> Exhibit 3– Answering Statement and Counterclaim, # <u>5</u> Exhibit 4 – Amended Counterclaim, # <u>6</u> Exhibit 5, Part 1 – Award, # <u>7</u> Exhibit 5, Part 2 – Award, # <u>8</u> Exhibit 5, Part 3 – Award, # <u>9</u> Exhibit 5, Part 4 – Award, # <u>10</u> Exhibit 5, Part 5 – Award, # <u>11</u> Exhibit 5, Part 6 – Award, # <u>12</u> Exhibit 6 – Hearing Testimony, # <u>13</u> Exhibit 7 – Scheduling Order, # <u>14</u> Exhibit 8 – Prehearing Brief, # <u>15</u> Proposed Order)(Owen, David) (Entered: 06/16/2014)
06/20/2014	<u>22</u>	MOTION to Stay by Elkland Holdings, LLC <i>or, in the Alternative, for an Order Holding All Further Actions Regarding Defendant's Motion to Partially Vacate or Modify in Abeyance</i> (Attachments: # <u>1</u> Memorandum in Support of Defendant's Motion to Stay, or in the Alternative, for an Order Holding All Further Actions Regarding Defendant's Motion to Partially Vacate or Modify in Abeyance, # <u>2</u> Proposed Order regarding Motion to Stay, or in the Alternative, for an Order Holding All Further Actions Regarding Defendant's Motion to Partially Vacate or Modify in Abeyance)(Owen, David). Added MOTION for Order on 6/23/2014 (STC). Modified on 6/23/2014 (STC). (Entered: 06/20/2014)
06/23/2014	<u>I</u>	NOTICE OF DOCKET MODIFICATION TO David Owen re <u>22</u> MOTION to Stay by Elkland Holdings, LLC <i>or, in the Alternative, for an Order Holding All Further Actions Regarding Defendant's Motion to Partially Vacate or Modify in Abeyance</i> . Error: This motion requests 2 forms of relief and only one form of relief was selected; Entry by attorney; Clerk added the motion relief requested. In the future, when filing a motion with multiple reliefs, select a motion relief for each relief requested, so all motions will appear on the Judge's motion report. No further action required by counsel. cc: COR (STC) (Entered: 06/23/2014)
07/10/2014	<u>23</u>	RESPONSE in Opposition re <u>21</u> MOTION to Vacate by Elkland Holdings, LLC filed by Eagle Mining, LLC. (Attachments: # <u>1</u> Exhibit 1 – Award of the Arbitrator, # <u>2</u> Exhibit 2 – Ricky Bragg Email dated May 1 2009, # <u>3</u> Exhibit 3– Jim Moore Email dated August 4, 2009, # <u>4</u> Exhibit 4– Keith Davis email dated November 19, 2009, # <u>5</u> Exhibit 5– Elkland Letter to Eagle dated January 10, 2013, # <u>6</u> Exhibit 6 – Cloyd & Associates letter dated November 11, 2009, # <u>7</u> Exhibit 7– Cloyd & Associates email dated November 12, 2009, # <u>8</u> Exhibit 8– Eagle letter to Elkland dated November 17, 2009, # <u>9</u> Exhibit 9 – Day 1 transcript excerpts, # <u>10</u> Exhibit 10– Day 2 transcript excerpts, # <u>11</u> Exhibit 11– Day 4 transcript excerpts, # <u>12</u> Exhibit 12– Day 5 transcript excerpts, # <u>13</u> Exhibit 13 – Day 8 transcript excerpts, # <u>14</u> Exhibit 14– Eagle's prehearing memorandum, # <u>15</u> Exhibit 15– Eagle's post–hearing memorandum, # <u>16</u> Exhibit 16– February 28, 2013 Elkland letter to Eagle, # <u>17</u> Proposed Order On Elkland's Motion to Partially Vacate and/or Modify Arbitration Award)(Napier, Gary) (Additional attachment(s) added on 7/10/2014: # <u>18</u> CORRECT Exhibit 14 Eagle's Prehearing Memo Part 1, # <u>19</u> CORRECT Exhibit 14 Eagle's Prehearing Memo Part 2, # <u>20</u> CORRECT Exhibit 15 Eagle's post–hearing memo Part 1, # <u>21</u> CORRECT Exhibit 15 Eagle's post–hearing memo Part 2) (STC). (Entered: 07/10/2014)
07/10/2014	<u>I</u>	NOTICE OF DEFICIENCY and NOTICE OF DOCKET MODIFICATION TO Gary Napier re <u>23</u> Response in Opposition to Motion. <u>Error 1</u> : Exhibits 11 and 12 are illegible; Entry by attorney; <u>within 7 calendar days</u> , prepare a pleading entitled "Notice of Filing" (with a certificate of service), file the Notice using the event "Notice of Filing," attach the correct exhibits, and create a link to the related docket entry. <u>Error 2</u> : Exhibits 14 and 15 exceed the five megabyte (5 MB) size limit; Entry by attorney; Correction: Clerk separated the PDF images into 2 segments. Counsel is reminded that large documents may not upload properly into ECF or download within a reasonable amount of time; therefore, when any particular document exceeds 5 MB, the document must be segmented into separate documents of 5 MB or less. The proper scanner settings are set forth on Page 5 of the ECF User Manual. No further action required by counsel as to Error 2. cc: COR (STC) (Entered: 07/10/2014)
07/14/2014	<u>24</u>	

RESPONSE in Opposition re 22 MOTION to Stay by Elkland Holdings, LLC *or, in the Alternative, for an Order Holding All Further Actions Regarding Defendant's Motion to Partially Vacate or Modify in Abeyance* MOTION for Order Holding Actions Re Defendant's Motion to Partially Vacate or Modify in Abeyance filed by Eagle Mining, LLC. (Attachments: #1 Exhibit 1– Petition filed by Elkland in West Virginia, #2 Exhibit 2– Eagle's Motion to Dismiss or to Transfer Venue filed in West Virginia, #3 Exhibit 3 – Eagle's Memo in Support of Motion filed in West Virginia, #4 Exhibit 4– Eagle's Reply filed in West Virginia, #5 Exhibit 5– Elkland's Motion to Partially Vacate or Modify filed in West Virginia, #6 Exhibit 6 – Eagle's Opposition to Elkland's Motion to Partially Vacate or Modify Arbitration Award filed in West Virginia, #7 Proposed Order Denying Elkland's Motion to Stay)(Napier, Gary) (Entered: 07/14/2014)

07/14/2014

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MEMORANDUM OPINION & ORDER: Defendant's motion to transfer venue 15 is GRANTED. Defendant's motion to dismiss for lack of jurisdiction 15 is DENIED AS MOOT. Defendant's motion to vacate the arbitration award 20 shall be TRANSFERRED to the United States District Court for the Southern District of West Virginia. Signed by Judge Amul R. Thapar on 7/14/2014.(STC)cc: COR (Entered: 07/14/2014)